

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Market Dominant Product Prices
Inbound Market Dominant Registered Service Agreement
Negotiated Service Agreements

Docket No. MC2016-168

Market Dominant Product Prices
Inbound Market Dominant Registered Service Agreement
(MC2016-168)
Negotiated Service Agreement

Docket No. R2016-6

ORDER ADDING INBOUND MARKET DOMINANT REGISTERED SERVICE
AGREEMENT 1 TO THE MARKET DOMINANT PRODUCT LIST
AND APPROVING TYPE 2 RATE ADJUSTMENT

(Issued August 17, 2016)

I. INTRODUCTION

On July 13, 2016, the Postal Service filed a request to add Inbound Market Dominant Registered Service Agreement (Registered Service Agreement) to the market dominant product list, effective October 1, 2016, along with a notice of a related Type 2

rate adjustment.¹ For the reasons discussed below, the Commission approves the Request and related Type 2 rate adjustment.

II. BACKGROUND

On July 13, 2016, the Postal Service filed its Request pursuant to statutory and regulatory filing requirements.² On July 14, 2016, the Commission provided public notice of the Postal Service's filing, appointed a Public Representative, and provided interested persons with an opportunity to comment.³ On August 2, 2016, the Commission issued an information request.⁴ On August 9, 2016, the Postal Service filed its response to the information request.⁵

III. POSTAL SERVICE FILING

Contents. The Request addresses the proposed addition of the Registered Service Agreement to the market dominant product list. It also includes a notice of a Type 2 rate adjustment, a supporting statement, redacted and unredacted copies of the Registered Service Agreement, proposed Mail Classification Schedule (MCS) language, redacted and unredacted versions of supporting financial documentation, and an application for non-public treatment of unredacted materials. Request at 3.

¹ See Request of United States Postal Service to Add Inbound Market Dominant Registered Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment, July 13, 2016, at 1, 2 (Request). See also Notice of United States Postal Service of Filing Errata Concerning Request of United States Postal Service to Add Inbound Market Dominant Registered Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment, July 13, 2016.

² The controlling statutory provisions are 39 U.S.C. §§ 3622(c)(10) and 3642; the controlling regulations are 39 C.F.R. § 3010.40 *et seq.*, and 3020.30 *et seq.*

³ See Docket Nos. CP2016-243, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, July 14, 2016.

⁴ Chairman's Information Request No. 1, August 2, 2016 (CHIR No. 1).

⁵ Response of the United States Postal Service to Chairman's Information Request No. 1, August 9, 2016 (Response to CHIR No. 1).

The Registered Service Agreement is a multilateral agreement for the electronic exchange of information related to sending and delivering inbound registered items. *Id.* at 1-2, 6. It concerns an ancillary service that is available with certain Inbound Letter Post mail items. *Id.* at 11. Its purpose is to upgrade service and compensate participating postal operators for providing timely delivery information and timely scans in electronic form. *Id.* at 2, 6, 7.

The Postal Service acceded to the Registered Service Agreement on October 1, 2013, and since then has reported related revenue within International Ancillary Service, a market dominant product. *Id.* at 2.

Statutory criteria. The Postal Service notes that under 39 U.S.C. § 3622(c)(10), the Commission must assess whether the Registered Service Agreement “(1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers.” *Id.* at 10. With respect to the first criterion, the Postal Service asserts that the rate adjustment should improve its net financial position, create an incentive to enhance operational performance, and result in an improvement over the default Universal Postal Union (UPU) rates for registered items. *Id.* at 1. With respect to the second criterion, the Postal Service asserts that the market is limited to the parties to the Registered Service Agreement “[b]ecause no other entities are in a position to serve as designated operators for the relevant types of mail” and “because no other entities are subject to terminal dues rates with respect to inbound Letter Post to the United States from the countries that are parties to the Registered Service Agreement.” *Id.* at 8. It asserts that the third criterion is inapplicable, given its position that that “there are no entities that are similarly situated to the designated postal operators of the countries that are parties to the Registered Service Agreement in [terms of] their ability to tender the Letter Post flows specified in the Registered Service Agreement . . . under similar operational conditions.” *Id.* at 10.

The Postal Service analogizes its Request, as it relates to the product list, to the treatment of the Exprès Service Agreement (Docket No. R2011-6), which is included within the Inbound Market Dominant Exprès Service Agreement 1 product. *Id.* at 12-13. It asserts that its filing addresses the criteria in 39 U.S.C. § 3642(b). *Id.* at 12. It further observes that in “Order No. 43, the Commission . . . assigned all inbound shipments of single-piece Letter Post to the market dominant category” and states that the Registered Service Agreement “implements certain remuneration terms and operational provisions concerning registered service for Letter Post.” *Id.* It also notes that the Commission has determined that certain subsequent bilateral and multilateral agreements satisfy the applicable statutory criteria for inclusion on the market dominant product list.⁶

Proposed exceptions to data collection and performance reporting requirements. The Postal Service states that it plans to report information on the Registered Service Agreement, including information about mail flows, in the Annual Compliance Report (ACR). Request at 9. Consequently, it seeks an exception from the requirement in 39 C.F.R. § 3010.43 for a special data collection plan. *Id.* In addition, the Postal Service seeks an exception from separate performance reporting under 39 C.F.R. § 3055.3(a)(3), on grounds that the Registered Service Agreement concerns the provision of a registered service in association with a product that is already being measured. *Id.* The Postal Service observes that the Commission has granted similar exceptions in connection with several other international mail agreements.⁷

⁶ *Id.* at 12-13. Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 99-100 (Order No. 43). See also Docket Nos. MC2010-35, R2010-5, R2010-6, Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010; Docket No. R2011-6, Order No. 876, Order Adding Inbound Market Dominant Exprès Service Agreement 1 to the Market Dominant Product List, September 26, 2011.

⁷ *Id.* at 9-10. The Postal Service cites the Exprès Service Agreement (Docket No. R2011-6), the TNT and China Post Agreements (Docket Nos. MC2010-35, R2010-5, R2010-6), and the Hongkong Post Agreement (Docket No. R2011-4).

IV. COMMENTS

The Public Representative filed comments on July 25, 2016.⁸ No other person filed comments. Based on her review of the Agreement and the supporting financial model, the Public Representative concludes that the Postal Service's assertions concerning improvements in net financial position, enhanced operational performance, avoidance of harm to the marketplace, and absence of any similarly situated mailers are accurate. PR Comments at 2-3. However, she expresses two concerns about the timing of the filing. One is that the Postal Service did not file the Request before its October 1, 2013, accession to the Registered Service Agreement. *Id.* at 3. The other is the Postal Service has not filed the FY 2014 and FY 2015 revenue, volume, or cost coverage data specific to the Agreement with the Commission. *Id.* She concludes that the prices in the supporting financial models cover costs and should improve the financial position of the Postal Service, but recommends that the Commission request additional information concerning the timing of this filing. *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Registered Service Agreement, supporting information, the financial analysis provided under seal, the Response to CHIR No. 1, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this proceeding entail assigning the Registered Service Agreement to either the market dominant product list or the competitive product list. 39 U.S.C. § 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with Postal Accountability and Enhancement Act requirements. For market dominant products, this

⁸ Public Representative Comments on Request of the United States Postal Service to Add Inbound Market Dominant Registered Service Agreement to the Market Dominant Product List, Type 2 Rate Adjustment, July 25, 2016 (PR Comments).

review includes an assessment of the consistency of the Registered Service Agreement with the requirements of 39 U.S.C. § 3622(c)(10).

Product list assignment. In determining whether to assign the Registered Service Agreement to the market dominant product list or the competitive product list, the Commission must consider whether the Postal Service exercises sufficient market power such that it can effectively set the price substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. 39 U.S.C. § 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products consists of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns when assigning the product to a product list. 39 U.S.C. § 3642(b)(3).

The Postal Service observes that in Order No. 43, the Commission assigned all inbound shipments of single-piece Letter Post to the market dominant category and, since then, has determined that agreements similar to the Registered Service Agreement met the criteria for inclusion on the market dominant product list. Request at 12. As a result, it asserts that the Registered Service Agreement should be added to the market dominant product list. *Id.* at 13. It also explains there are few alternatives for sending and receiving Inbound Letter Post because the Postal Service and foreign postal operators service as their countries' designated operators; states that foreign postal operators and their mailing customers find the mail services offered through the Registered Service Agreement invaluable; and asserts that the Registered Service Agreement should not have adverse effects on small business concerns. *Id.*, Attachment 1 at 5-6.

No commenter opposes the addition of the Registered Service Agreement to the market dominant product list. The Commission finds that the very limited alternatives to

Inbound Letter Post and related services mean there is little risk the Postal Service would lose a significant level of business to other firms if it raised prices significantly or above costs or decreased quality or output. This is consistent with the Commission's determination in Order No. 43 with respect to Inbound Letter Post and subsequent decisions concerning several similar agreements. In addition, foreign postal operators, their customers, and the Public Representative support the addition of the Registered Service Agreement product to the market dominant product list. Further, there is no evidence of an adverse impact on small businesses. Therefore, the Commission will designate the Registered Service Agreement as Inbound Market Dominant Registered Service Agreement 1 and will add it as a new product to the market dominant product list.

Requirements for market dominant NSAs. When reviewing a market dominant negotiated service agreement (NSA), the Commission must determine that such an agreement meets applicable statutory requirements. Section 3622(c)(10) requires that a market dominant NSA: (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers.

The Postal Service asserts that the agreement improves its net financial position. Request at 1. The Postal Service also represents that the Registered Service Agreement creates an incentive to improve mail processing and transportation, given the opportunity to be compensated for timely delivery of registered items and timely scans concerning inbound registered items. *Id.* at 7. The Postal Service asserts that the Registered Service Agreement will not result in unreasonable harm to the marketplace and that that the "similarly situated mailer" criterion of section 3622(c)(10) is inapplicable in this instance. *Id.* at 8, 10.

Given the Postal Service's characterization of the Registered Service Agreement as limited to designated foreign operators, the Commission concurs with the Postal

Service's assessment that there are no entities similarly situated to the designated foreign operators that are the signatories to this agreement. The Commission also finds the Agreement will not cause unreasonable harm to the marketplace given the impact of the contracting parties' status as designated operators in the market.

The Commission has reviewed the data and information the Postal Service has filed concerning the financial effect of the agreement, as well as costs, volumes, and anticipated revenues. Based on its review of supporting financial data filed under seal, the Commission concludes that the Registered Service Agreement should enhance the net financial position of the Postal Service in accordance with 39 U.S.C. § 3622(c)(10)(A).

The Commission also finds that, in the future, additional information concerning the calculation of remuneration should be filed with the financial workpapers. Therefore, future workpapers pertaining to the Registered Service Agreement should include the following: volume, revenue, and cost data, disaggregated by country of origin, for each component of remuneration gathered in accordance with Annex 4 of the Registered Service Agreement.

Requests related to data collection plan and service performance reporting. The Postal Service seeks exceptions from requirements to create a separate data collection plan and to report service performance for the Registered Service Agreement. The Postal Service states that it will report information on the Registered Service Agreement in the ACR. In addition, NSAs with substantially all components of the agreement included in the measurement of other products may be granted an exception from reporting pursuant to 39 C.F.R. § 3055(a)(3). The Commission finds the Postal Service's requests reasonable and grants the exceptions.

Early termination. The Registered Service Agreement has an indefinite term, but the Postal Service has the right to withdraw, consistent with contractual provisions. Request, Attachment 2 at 3 (Article 8). If the Postal Service elects to withdraw from the

Registered Service Agreement, the Postal Service shall promptly notify the Commission of the effective date of its withdrawal.

Other considerations. The Postal Service acceded to the Registered Service Agreement on October 1, 2013, but did not file it with the Commission until July 13, 2016. Request at 2. The Postal Service attributes the delay in filing to inadvertence and internal confusion of similar matters. Response to CHIR No. 1, question 1. Based on the Postal Service's representations, the Commission considers the delayed filing of the Registered Service Agreement an isolated incident, not requiring further action. In the event the need for a delayed filing arises in the future, the Commission directs the Postal Service to promptly notify the Commission and to include an explanation for the delay in its filing.

Conclusion. The Commission adds Inbound Market Dominant Registered Service Agreement 1 to the market dominant product list. The Commission approves the Type 2 rate adjustment filed in this proceeding. Both actions are effective October 1, 2016.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Inbound Market Dominant Registered Service Agreement 1 as a new market dominant product, effective October 1, 2016.
2. The Commission approves, effective October 1, 2016, the Type 2 rate adjustment presented in the Request of the United States Postal Service to Add Inbound Market Dominant Registered Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment, filed July 13, 2016.
3. If the Postal Service withdraws from the Registered Service Agreement, it shall notify the Commission as set forth in the body of this Order.

5. The Postal Service's requests that the Registered Service Agreement be excepted from separate data collection and performance requirements under 39 C.F.R. §§ 3010.43 and 3055.3(a)(3) is granted.
6. The Postal Service shall file workpapers in future filings that include the following: volume, revenue, and cost data, disaggregated by country of origin, for each component of remuneration gathered in accordance with Annex 4 of the Registered Service Agreement.
7. The Secretary shall arrange for the publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Market Dominant Product List. These changes reflect the Commission’s order in Docket Nos. MC2016-168 and R2016-6. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix A to subpart A of Part 3020—Market Dominant Product List

International*

Inbound Market Dominant Registered Service Agreement 1

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part A—Market Dominant Products **1000 Market Dominant Product List**

Negotiated Service Agreements*

International*

Inbound Market Dominant Registered Service Agreement 1

1600 Negotiated Service Agreements

1602 International

1602.2 Negotiated Service Agreement Groups

- Inbound Market Dominant Registered Service Agreement 1 (1602.5)

1602.5 Inbound Market Dominant Registered Service Agreement 1

Reference

Docket No. MC2016-168 and R2016-6

PRC Order No. 3471, August 17, 2016

Ongoing
